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Paper No. 5

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In re Application of
Avto Tavkhelidze, et al.
Application No. 09/481,803
Filed: August 31, 1998
For: Diode Device

OFFICE OF PETITIONS
DEPUTY A/C PATENTS
DECISION GRANTING PETITION

This is a decision on the petition filed May 5, 1999¹, requesting that the FWC request under 37 CFR § 1.62² filed August 31, 1998, be treated as a continuation-in-part (CIP) application filed under 37 CFR 1.53(b) and accorded a filing date of August 31, 1998.

Receipt is hereby acknowledged of a facsimile on November 25, 1998, including, *inter alia*, a copy of the request for FWC, Supplemental Declaration, and pages 1-20 of the specification filed on August 31, 1998, a copy of Express Mail Label No. EE083773371US showing a "date-in" date of August 31, 1998, a copy of a date stamped post card acknowledging receipt of the application papers filed on August 31, 1998, and a copy of check no. 6301 for \$801.00. Receipt is also acknowledged of the correspondence filed November 30, 1998, including *inter alia*, copies of the FWC request, Supplemental Declaration, Express Mail Label No. EE083773371US, date stamped post card, check no. 6801, pages 1-42 of the specification, and five (5) sheets of drawings. Any inconvenience caused by the delay in responding to the requests is regretted.

A copy of the application papers (specification, pages 1-42, five sheets of drawings, and supplemental Declaration), were filed on August 31, 1998.

A review of application file no. 08/924,910 reveals that the application papers filed on August 31, 1998, were not matched with the file. Subsequently in October of 1998, each applicant submitted a request that application no. 08/924,910 be expressly abandoned in favor of the CIP filed August 31, 1998. The letter of express abandonment was processed and entered on October 28, 1998. Correspondence regarding the status of the application filed August 31, 1998 was filed on November 25, 1998, and November 30, 1998 as acknowledged above. The instant petition was filed on May 5, 1999.

¹ The petition filed May 5, 1999, was signed by only one inventor, Jonathan S. Edelson. A supplemental petition was filed December 7, 1999, with co-inventor, Avto Tavkhelidze's signature.

² 37 CFR 1.62 was deleted from Title 37 of the Code of Federal Regulations effective December 1, 1997. See Notice of Final Rule, 62 Fed. Reg. 53132 (October 10, 1997).

In view of the evidence submitted and the fact that the original papers filed August 31, 1998, were received and have now been matched with the file, it has been determined that the FWC request was filed prior to the abandonment of prior application no. 08/924,910, but was not matched with the file and was not processed. Therefore, the application was pending at the time the FWC request was filed.

Accordingly, the petition to treat the application filed August 31, 1998, as a CIP application under 37 CFR 1.53(b) with a filing date of August 31, 1998, is **granted**.

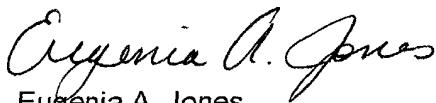
The original request for a File-Wrapper-Continuing Application, specification, and drawings filed August 31, 1998, and original petition filed on May 5, 1999, and accompanying papers have been removed from the file of application no. 08/924,910 and have been assigned application no. 09/481,803. The papers filed November 25, 1998, and November 30, 1998 have also been removed and placed in the file of application no. 09/481,803. All future correspondence concerning the continuation-in-part application should be directed to application no. 09/481,803. The Notice of Change of Correspondence Address filed in application no. 08/924,910 on May 18, 1999, is hereby acknowledged and a copy has been placed in application file no. 09/481,803.

Petitioner's request for a refund of the petition fee is denied. The petition and fee were required to correct applicant's error of filing a request for a FWC application under 37 CFR 1.62 which had been deleted from Title 37 of the Code of Federal Regulations at the time the CIP application, now assigned application no. 09/481,803, was filed.

After mailing of this decision, Office records will be corrected to show that the \$395.00 basic filing fee, excess claims fees of \$164.00 and \$ 242.00 paid on August 31, 1998, and the petition fee of \$130.00 for the instant petition paid on May 5, 1999, were paid in application no. 09/481,803, not application no. 08/924,910.

Thereafter, application no. 09/481,803 will be forwarded to the Office of Initial Patent Examination Division for further processing as a CIP under 37 CFR § 1.53(b) with a filing date of August 31, 1998, using the specification including claims, drawings, Supplemental Declaration filed August 31, 1998.

Telephone inquiries may be directed to Petitions Attorney, Jennifer M. Hayes, at (703) 306-5608, or if unavailable, the undersigned at (703) 305-9285.



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